

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TITANESS LIGHT SHOP, LLC,

Plaintiff,

v.

SUNLIGHT SUPPLY INC.; et al.,

Defendants.

3:12-cv-0620-LRH-VPC

ORDER

Before the court is plaintiff and counter-defendant Titaness Light Shop, LLC's ("TLC") motion to strike portions of defendants Sunlight Supply Inc. and IP Holdings, LLC's (collectively "defendants") reply in support of defendants' motion for preliminary injunction (Doc. #31¹). Doc. #32. Defendants filed an opposition (Doc. #34) to which TLC replied (Doc. #35).

The court may strike a filing for "any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f). Further, to the extent that a party raises a new argument or proffers new evidence and information in a reply brief, that argument or evidence is improper because the opposing party is deprived of an opportunity to respond. *Tovar v. United States Postal Service*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993). Therefore, the court cannot consider new evidence provided in a reply when the other party does not have an opportunity to respond to the evidence. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996).

¹ Refers to the court's docket number.

1 Here, defendants argue that their reply brief only responds to certain arguments raised in
2 TLC's opposition, and as such, these arguments should not be stricken from the reply. The court
3 agrees. However, the court finds that based on the breadth of arguments raised in the reply, TLC
4 should be granted an opportunity to provide a brief response. *See Cedars-Sinai Medical Center v.*
5 *Shalala*, 177 F.3d 1126, 1129 (9th Cir. 1999) (a court has the inherent authority to grant leave to a
6 party to file a sur-reply when the information would be germane to the court's evaluation of a
7 pending matter). Therefore, the court shall deny TLC's motion to strike, but allow TLC to file a
8 sur-reply.

9
10 IT IS THEREFORE ORDERED that plaintiff's motion to strike (Doc. #32) is DENIED.

11 IT IS FURTHER ORDERED that plaintiff shall file a brief sur-reply to defendants' motion
12 for a preliminary injunction of no more than ten (10) pages, within fifteen (15) days of entry of this
13 order.

14 IT IS SO ORDERED.

15 DATED this 9th day of May, 2013.



16
17 _____
LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26